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DEC 23 2011

PTO/SB/85 (03-08)

Approved for use through 03/31/2012. OMB 0951-0016  
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1996, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))Docket Number (Optional)  
801134

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 273-3282.

Patent Number: 5,988,097

Application Number: 09/197,987

Issue Date: 11/23/1999

Filing Date: 11/23/1998

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.368(c) and (d).

Also complete the following information, if applicable:

12/29/2011 DALLEN 00000018 5988097

01 FC:1599

3375.00 UP

The above-identified patent:

is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_;

original application number \_\_\_\_\_

original filing date \_\_\_\_\_

resulted from the entry into the U.S. under 35 U.S.C. 371 of international application

filed on \_\_\_\_\_.

## CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

12/23/2011

Date

/Gail Taylor Russell/

Signature

Gail Taylor Russell

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-8199 and select option 2.

DEC 23 2011

PTO/5B/85 (03-09)

Approved for use through 09/31/2012. OMB 0851-0016  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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## 1. SMALL ENTITY

 Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

 Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/>	\$ _____	3 1/2 yr fee	<input type="checkbox"/>	\$ _____	3 1/2 yr fee
<input type="checkbox"/>	\$ _____	7 1/2 yr fee	<input type="checkbox"/>	\$ _____	7 1/2 yr fee
<input checked="" type="checkbox"/>	\$ _____	11 1/2 yr fee	<input checked="" type="checkbox"/>	\$ 2365	11 1/2 yr fee

MAINTENANCE FEE BEING SUBMITTED \$ 2365

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 700

## 5. MANNER OF PAYMENT

 Enclosed is a check for the sum of \$ \_\_\_\_\_ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_. Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

 The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. \_\_\_\_\_.

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PTO/SB/65 (03-09)

Approved for use through 09/31/2012. OMB 0851-0018  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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## 7. OVERPAYMENT

As to any overpayment made, please

 Credit to Deposit Account No. \_\_\_\_\_

OR

 Send refund check

## WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

## 8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

## 9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

/Gail Taylor Russell/

12/23/2011

Date

Signature(s) of Petitioner(s)

36,290, Cust. No. 23372

Gail Taylor Russell

Registration Number, if applicable

Typed or printed name(s)

512-338-4601

10601 FM 2222, SUite R-12

Telephone Number

Address

Austin, TX 78730

Address

## ENCLOSURES:

- Maintenance Fee Payment
- Statement why maintenance fee was not paid timely
- Surcharge under 37 CFR 1.20(f)(1) (fee for filing the maintenance fee petition)
- Other: Petition Fee & Fee Sheet  
Power of Attorney

PTO/SB/65 (03-08)

Approved for use through 09/30/2012. OMB 0651-0018

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

Signature Page Attached

Signature

12/23/2011

Date

Signature Page Attached

Type or printed name

Registration Number, if applicable

**STATEMENT**

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

Statement Attached

*(Please attach additional sheets if additional space is needed)*

[Page 4 of 4]

PTO/SB/81 (07-09)

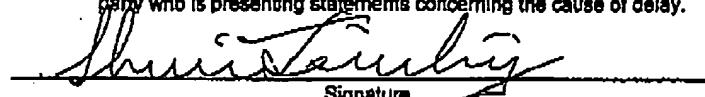
Approved for use through 07/31/2012. GMB 0651-0031

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.



Signature

12/22/2011

Date

Sherrie Frieling

Typed or printed name

5,988,097

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

See Attachment A, Declaration attached for a detailed explanation of unavoidable abandonment

(Please attach additional sheets if additional space is needed.)

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**5,988,097**

**ATTACHMENT A**  
**DECLARATION**

DEC 23 2011

5,988,097

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Assignee: SmartBoat, LLC	Attorney Docket No.: 801134
US Patent No.: 5,988,097	
Issued: 11/23/1999	
Title: Watercraft Stabilized by Controlled Hydrofoil Elevation	

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF UNAVOIDABLE ABANDONMENTUNITED STATES PATENT NO. 5,988,097

Sir:

I, Sherrie Frieling, do hereby declare and state:

1. I am the Managing Member of SmartBoat, LLC ("SmartBoat"), the assignee and current owner of United States Patent No. 5,988,097, with the legal authority to submit this declaration on behalf of SmartBoat.
2. U.S. Patent No. 5,988,097 was unavoidably abandoned for failure to pay the 11.5 year maintenance fee. The patent expired on November 23, 2011.
3. The circumstances surrounding such failure to pay are as follows:
  - a. The patent agent of record for the above referenced patent failed to notify the patent owner of the due date for the maintenance fee.
  - b. SmartBoat only became aware of the abandonment of the patent when I personally checked the status of the patent on the USPTO website on December 17, 2011.

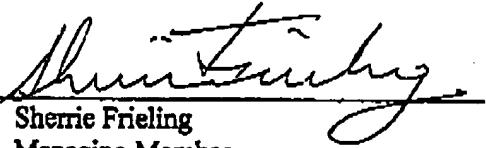
5,988,097

- c. On that same day, I contacted a patent attorney by email communication to advise SmartBoat as to the actions necessary to revive the patent.
- d. The filing of this declaration and accompanying petition to revive the patent occurred within a week of the finding that the patent had expired and within a month after the expiration date.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made herein with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18, § 1001 of the United States Code, and that any such willful false statements may jeopardize the validity of the application or patent issuing therefrom.

Date: December 22, 2011

Signed:



Sherrie Frieling  
Managing Member  
SmartBoat, LLC